

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Patry	Team: Team # 7	CCRB Case #: 200708516	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/09/2007 10:27 PM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 12/9/2008	EO SOL 12/9/2008	
Date/Time CV Reported Fri, 06/15/2007 3:46 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/15/2007 3:46 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Patrick Cortright	00000	910420	044 PCT
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Moryl	11353	942243	044 PCT
2. SGT Osvaldo Nunez	00000	918086	044 PCT
3. SGT Francisco Perez	00767	924326	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer searched § 87(2)(b)'s vehicle.	
B.LT Patrick Cortright	Abuse: Lt. Patrick Cortright stopped § 87(2)(b)	
C.LT Patrick Cortright	Abuse: Lt. Patrick Cortright searched § 87(2)(b)	
D.LT Patrick Cortright	Abuse: Lt. Patrick Cortright searched § 87(2)(b)'s vehicle.	

Synopsis

On June 9, 2007, at approximately 10:27 PM, § 87(2)(b) drove his sister's car to § 87(2)(b) in the Bronx. When he arrived, § 87(2)(b) went inside of the building and left, § 87(2)(b) § 87(2)(b) the passenger inside of the car. As § 87(2)(b) was inside, Lt. Patrick Cortright and an unidentified officer arrived on scene. § 87(2)(g)

When § 87(2)(b) exited § 87(2)(b) he allegedly saw an unidentified officer searching his car (**Allegation A**). § 87(2)(b) alleged that Lt. Patrick Cortright told him to go stand against a gate and not to move (**Allegation B**). Lt. Cortright then allegedly searched § 87(2)(b)'s pants pockets (**Allegation C**). After this, § 87(2)(b) alleged that Lt. Cortright searched throughout his car and the trunk of the car (**Allegation D**). Lt. Cortright and the unidentified officer recovered marijuana from the trunk and placed § 87(2)(b) and § 87(2)(b) under arrest. § 87(2)(b) and § 87(2)(b) were transported back to the 44th Precinct stationhouse by a marked van. When they arrived at the stationhouse Lt. Cortright assigned the arrests to PO Joseph Moryl, who was not at location while the males were arrested.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

This case was originally assigned to Inv. Debra Cleaver. It was then transferred to Inv. Echo Brown and ultimately assigned to the undersigned investigator.

Summary of Complaint

§ 87(2)(b) called the CCRB on June 15, 2007, and reported the complaint on the behalf of her son, § 87(2)(b). § 87(2)(b) did not witness the incident. § 87(2)(b) provided the following statement at Rikers Island on September 13, 2007 (Encl. 5A-C):

On June 9, 2007, § 87(2)(b) borrowed the car from his sister § 87(2)(b) § 87(2)(b). His sister did not report the car stolen. § 87(2)(b) was hanging out with his friend, whom he believed to be § 87(2)(b). During the course of the investigation, it was determine by police documents that individual whom § 87(2)(b) believed to be § 87(2)(b) was § 87(2)(b). The two men drove to § 87(2)(b). A female friend of § 87(2)(b) (name unknown) lives there. This is a private residence with a gated front yard. § 87(2)(b) parked his car in front of the house and went inside to change his clothes. § 87(2)(b) remained in the car watching a DVD on § 87(2)(b)'s portable DVD player. The windows were down and § 87(2)(b) was alone in the car. Several of § 87(2)(b)'s friends (names unknown) were hanging in front of the residence.

§ 87(2)(b) was inside changing his clothes when § 87(2)(b) friends came inside and said that the police were searching § 87(2)(b)'s car and demanding to speak to the owner. § 87(2)(b) looked out of the window and saw that the police were there. § 87(2)(b) exited the apartment.

There were two uniformed officers in white shirts on the scene. The officers were driving an unmarked vehicle. § 87(2)(b) was standing next to § 87(2)(b)'s car. PO1, a white male, approximately 6'1", with glasses, a possible moustache, dark hair, in his late 40s to early 50s, and muscular build, was already searching § 87(2)(b)'s car. An officer who § 87(2)(b) described a white male, approximately 5'10", with no facial hair or glasses, a husky build, blond hair, in his late 40s to 50s, told § 87(2)(b) to go stand against the gate and not move. In a photo array § 87(2)(b) identified this officer as Lt. Cortright. § 87(2)(b) complied. Lt. Cortright searched § 87(2)(b) he reached into § 87(2)(b)'s pants pockets and removed his cell phone and his wallet. Lt. Cortright did not frisk § 87(2)(b). Lt. Cortright then handcuffed § 87(2)(b). PO1 was searching the car while this was going on. Lt. Cortright searched under the front seats, in the back seats, in the glove box, and then opened the trunk using the release button under the steering wheel and searched the trunk. PO1 found several bags of marijuana

under the spare tire in the trunk. The officers placed § 87(2)(b) under arrest. This marijuana belonged to § 87(2)(b). § 87(2)(b) could not recall how much marijuana was there.

The officers placed § 87(2)(b) under arrest and called for a marked auto to transport both men to the precinct. A van full of uniformed officers arrived and transported § 87(2)(b) and § 87(2)(b) to the stationhouse. At the stationhouse, the officers in the white shirts asked “who wants to take the arrests.” A male officer in a blue shirt took the arrests. Ultimately the charges were dropped against § 87(2)(b) and § 87(2)(b).

It took a few days for § 87(2)(b) to get his car back from the precinct. Several items were missing: § 87(2)(b)'s social security card and birth certificate, several CDs and DVDs, and the wire that connects the DVD player to the car lighter. Nothing in the car was broken or damaged.

§ 87(2)(b) was shown Photo Array A at § 87(2)(b) on Rikers Island on September 5, 2008 (Encl. 6A-J):

§ 87(2)(b) was shown photo of Ins. James Essig, Lt. Patrick Cortright, Cpt. Emilio Melendez, and five filler photographs. § 87(2)(b) was shown the above photographs because § 87(2)(b) stated that the two officers who searched him and his car were wearing white shirts and these were the only officers working in the 44th Precinct during the time of the incident that would be wearing white shirts.

§ 87(2)(b) did not recognize Ins. James Essig. § 87(2)(b) did not recognize the officers in photographs two and three, filler photographs. § 87(2)(b) recognized Lt. Cortright as the officer who searched his car. § 87(2)(b) stated that he was “75 percent sure” that Lt. Cortright searched his car. § 87(2)(b) was “75 percent sure” that the officer in photograph five, a filler photo, as “the other officer that was holding me against the gate who cuffed me, while the other officer searched.” § 87(2)(b) did not recognize Cpt. Emilio Melendez. § 87(2)(b) was “50 percent sure” that the officer in photograph seven, a filler photograph, handcuffed him. After this, § 87(2)(b) stated that he thought the officer in photograph five, a filler photo was the officer who handcuffed him. § 87(2)(b) did not recognize the officer in photograph eight, a filler photograph.

§ 87(2)(b) had no contact information for § 87(2)(b).

Results of Investigation

Civilians not Interviewed:

According to the command log entry of the 44th Precinct for June 9, 2007, an individual named § 87(2)(b) was arrested at the same time as § 87(2)(b). No one named § 87(2)(b) was arrested on June 9, 2007. A Lexis Nexis search for the names § 87(2)(b), Anthony § 87(2)(b) and § 87(2)(b) § 87(2)(b) were run with the date of birth, § 87(2)(b). There were no results. A Lexis Nexis search was run for § 87(2)(b)'s address, § 87(2)(b) (Encl. 21A-G), and it was found that the building is an apartment with many people but there was no one with the last name § 87(2)(b) residing at the building. Additionally, § 87(2)(b) had no contact information for § 87(2)(b) so it was not possible to locate him. § 87(2)(b) was not interviewed because she did not witness the incident.

Officer Statements:

Lt. Cortright provided the following statement to the CCRB on November 29, 2007 (Encl. 9A-B):

Lt Cortright worked from 6:15pm on June 9, 2007 until 3:00am. Lt. Cortright was the impact lieutenant. Lt. Cortright stated that he did not have a partner on the date of incident. Lt. Cortright stated that he was with “somebody” during this incident, but he didn’t recall who. Lt. Cortright did not recall any details about the officer that he was working with. Lt. Cortright stated that even if he saw the roll call, he would not be able to identify the officer that he was working with during this incident. Lt. Cortright was in uniform and was assigned to a black unmarked Impala. Lt. Cortright was the driver.

Lt. Cortright read the following entries from his memo book (Encl. 8A-E):

22:20: § 87(2)(b) 10x12 (police officer holding suspect) x2. Defendant § 87(2)(b) § 87(2)(b), NY 10453 § 87(2)(b) Defendant § 87(2)(b) § 87(2)(b) § 87(2)(b), charged with § 87(2)(b) UF-250 completed for § 87(2)(b) who was charged with § 87(2)(b). Actions indicative of a crime: furtive movements, inconsistent response, exited vehicle, stated did not know owner or driver of the vehicle. Voided arrest on defendant § 87(2)(b) § 87(2)(b) admitted that marijuana in trunk was his in a witness statement after Miranda Warnings. PO Moryl was assigned arrest.

On June 9, 2007 at approximately 10:30pm, Lt. Cortright was driving down the street when he observed a vehicle playing loud music. The car was turned on and the engine was running. In regards to where the car was parked, Lt. Cortright stated the following: "The car was parked in front of the location. It might have been a driveway. It wasn't totally parked. It was like out of the car. It wasn't like it was parked. It was parked, but it wasn't parked legally...It wasn't up against the curb." A male individual, who Lt. Cortright later identified as § 87(2)(b) exited the passenger side of the vehicle and walked towards the sidewalk. Lt. Cortright asked § 87(2)(b) why the music was so loud in the vehicle. § 87(2)(b) said, "I don't know. I was just listening to it." Lt. Cortright asked § 87(2)(b) who the car belonged to. § 87(2)(b) said, "I don't know." Lt. Cortright said, "You don't know whose car that is. You were just in it." § 87(2)(b) again said, "I don't know." Lt. Cortright stated that § 87(2)(b)'s answers to his questions made him suspicious. At this point, Lt. Cortright believed § 87(2)(b) may have stolen the car or may have been trying to steal stuff out of the car. When asked if he asked § 87(2)(b) for his license or other identifying information, Lt. Cortright stated, "He wasn't driving the car. He was in the passenger side of the car. So my question to him was "Why is the music loud." When asked why he did not ask § 87(2)(b) for ID, Lt. Cortright stated, "I'm not saying I didn't. When I first initially stopped him, I wasn't asking him for ID, I was just seeing what he was doing in the car." When asked if he ever asked § 87(2)(b) for ID, Lt. Cortright stated, "I don't know." Lt. Cortright then asked § 87(2)(b) to step aside and Lt. Cortright's partner, PO1, stood with § 87(2)(b) at the back of the vehicle. Lt. Cortright stated that he did not see what PO1 was doing with § 87(2)(b) at the back of the vehicle because his attention was now focused on the vehicle. Lt. Cortright stated that he did not know if PO1 frisked or searched § 87(2)(b) When asked if he frisked or searched § 87(2)(b) Lt. Cortright stated, "I don't know. I did a UF-250 on him so...I don't know."

Lt. Cortright got into the car and turned down the music and looked in the glove box for the vehicle's registration. Lt. Cortright stated that he was going to use the registration to find an address that might locate the owner and he could find out what was going on. There was nothing in the glove box. Lt. Cortright stated that after he was unable to find a registration in the glove box, he was going to drive the car back to the precinct because he believed the car to be stolen. Lt. Cortright searched the passenger and driver's side of the vehicle. Lt. Cortright also searched the back seat of the vehicle. Lt. Cortright removed the keys from the ignition and searched the trunk. Lt. Cortright stated that he searched the trunk to make sure there was no "body or flammable liquids" that could cause him harm while driving the car back to the precinct. Lt. Cortright stated that there was marijuana in the trunk.

While Lt. Cortright was searching the trunk, another male individual, who Lt. Cortright later identified as § 87(2)(b) approached him and said, "Hey! What are you doing with my car?" Lt. Cortright stated that § 87(2)(b) approached him three minutes after he stopped § 87(2)(b) Lt. Cortright said, "This is your car?" Lt. Cortright then pointed to § 87(2)(b) and said, "Who is this?" § 87(2)(b) said, "I don't know who this guy is." Lt. Cortright stated that at this point, § 87(2)(b) was under arrest because he had been in § 87(2)(b)'s vehicle and § 87(2)(b) stated that he did not know him. Lt. Cortright then pointed to the trunk and said, "Everything in this trunk is yours?" § 87(2)(b) replied, "Yeah, the weed is mine. Lt. Cortright then arrested § 87(2)(b) Lt. Cortright stated that he did not remember if he frisked or searched § 87(2)(b) Lt. Cortright stated that he drove § 87(2)(b)'s car back to the station house. Lt. Cortright stated that the plates for § 87(2)(b)'s car were "run," but he did not recall who ran the plates or when they were run. Lt. Cortright stated that he did not recall if the plates were run at the precinct or at the scene. Lt. Cortright did not damage and part of the car while searching it.

Lt. Cortright stated that he assigned PO Moryl § 87(2)(b)'s arrest, but PO Moryl was not at the scene of incident.

Sgt. Nunez provided the following statement on March 11, 2008 (Encl. 13A-B):

On the date of incident, Sgt. Nunez was in uniform and he was the desk officer. Sgt. Nunez was not working with anyone in particular. Sgt. Nunez worked from 11:30pm on June 8, 2007 until 10:27am on June 9, 2007. Sgt. Nunez was not working at 10:30pm on June 9, 2007. Lt. Nunez did not have any memo book entries relevant to this incident.

Sgt. Nunez did not recall details about this incident. Sgt. Nunez did not know why he was assigned to impact on the tour 3 June 9, 2007 roll call. Sgt. Nunez stated that it was a mistake. Sgt. Nunez stated that he is not the impact officer to which the SPRINT is referring. Sgt. Nunez knows Lt. Cortright, but did not work with him on the date of incident. Sgt. Nunez did not stop and search any vehicles on the date of incident and he did not search any one at the incident location because he was assigned to the desk.

Sgt. Perez who was listed as the supervising officer on § 87(2)(b)'s arrest report was interviewed on January 17, 2008 (Encl. 11A-B). Sgt. Perez had no recollection of the incident.

NYPD Documents:

SPRINT Print-Out (Encl. 16):

On June 9, 2007, at 10:25 PM, the XO (based on officer interviews and roll call it is unclear who the XO was) reported one under from § 87(2)(b) 44ST2 and 44LT1 made arrests at 10:27 PM and 44LT1 verified the arrest. At 10:27 PM the impact sergeant responded to the location

Complaint Report (Encl. 14A-B) and Arrest Report (Encl. 15A-C) for § 87(2)(b) completed by PO Joseph Moryl:

On June 9, 2007, at 10:10 PM, § 87(2)(b) was found to be in custody and control of a blue 1991 Toyota Corolla that had marijuana inside of it, in front of § 87(2)(b) in the Bronx. § 87(2)(b) was arrested and charged with § 87(2)(b)

Command Log Entries completed in regards to PO Joseph Moryl arrests (Encl. 17):

At 10:35 PM arrests for § 87(2)(b) and § 87(2)(b) were logged into the 44th Precinct command log. § 87(2)(b) and § 87(2)(b) were arrested for § 87(2)(b) § 87(2)(b) is a black male, with the date of birth § 87(2)(b), who lives at § 87(2)(b)

44th Precinct Tour 3 Roll Call for June 9, 2007 (Encl. 18A-L):

Lt. Cortright was assigned to be the community policing supervisor from 6:15 PM to 3:00 AM. Sgt. Perez was assigned to be a detail supervisor and he worked a tour of 5:30 PM by 2:05 AM. Sgt. Nunez was assigned to be a community policing impact supervisor and he worked a tour of 5:15 PM to 2:12 AM. PO Moryl was assigned to a precinct mobile detail and he worked a tour of 5:30 PM by 2:05 AM. No officer on the roll call was listed as the XO.

Decline to Prosecute Form (Encl. 20G):

§ 87(2)(g), § 87(2)(a) 160.50

Disposition of Case (Encl. 20G):

§ 87(2)(a) 160.50

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Lt. Patrick Cortright's CCRB History (Encl. 2A-B):

Lt. Cortright was substantiated for a vehicle stop in CCRB case 200412058 and he received instructions.

Conclusions and Recommendations

Undisputed Facts:

An individual remained inside of § 87(2)(b)'s car when he entered § 87(2)(b) § 87(2)(b) was inside § 87(2)(b) when the police arrived at the location. § 87(2)(b) was in custody of the car that the officers searched. Lt. Cortright searched § 87(2)(b)'s car.

Disputed Facts:

§ 87(2)(g)

§ 87(2)(b) stated that he and an individual named § 87(2)(b) were arrested together on July 9, 2007. Lt. Cortright stated that § 87(2)(b) was arrested with an individual named § 87(2)(b). According to a command log entry completed at 10:35 PM at the 44th Precinct stationhouse an individual named § 87(2)(b) who lives at § 87(2)(b) and § 87(2)(b) were arrested for PL § 87(2)(b) § 87(2)(b) arrest was voided. § 87(2)(g)

§ 87(2)(b) alleged that Lt. Cortright and an unidentified officer searched his car when he was arrested. Lt. Cortright admitted to searching § 87(2)(b)'s car but he never made any mention of another officer searching § 87(2)(b)'s car. § 87(2)(g)

Lt. Cortright alleged that he searched the trunk of § 87(2)(b)'s car prior to § 87(2)(b) exiting § 87(2)(b) § 87(2)(b) stated that Lt. Cortright searched the trunk of his car after § 87(2)(b) came outside. § 87(2)(g)

Allegations not Pleaded:

§ 87(2)(b) alleged that his social security card, birth certificate, several CDs and DVDs, and the wire that connects the DVD player to the car lighter was missing from his car. § 87(2)(g)

Allegation (A): An officer searched § 87(2)(b)'s vehicle.

§ 87(2)(b) alleged when he came outside from § 87(2)(b) that an officer wearing a white shirt was searching his car. § 87(2)(b) was shown a photo array which contained all officers who would be wearing white shirts from the 44th Precinct during the time of the incident and he identified two filler photographs as officers who searched his car. § 87(2)(g)

Allegation (B): Lt. Patrick Cortright stopped § 87(2)(b)

§ 87(2)(b) alleged that when he exited § 87(2)(b) Lt. Cortright told him to stand up against a gate and not to move. § 87(2)(g)

According to the NYPD Street Encounters- Legal Issues (Encl. 1A), in order to effect a level three stop an officer must have “a reasonable suspicion that a person is committing, has committed, or is about to commit a felony or a Penal Law misdemeanor. Reasonable suspicion exists when the information known to the MOS is of such weight and persuasiveness as to make the MOS, depending on his/her judgment and experience, reasonably suspect criminality.” § 87(2)(g)

Allegation (C): Lt. Patrick Cortright searched § 87(2)(b)

§ 87(2)(b) alleged that when he came out of § 87(2)(b) that Lt. Cortright searched him prior to discovering marijuana in his trunk. Lt. Cortright stated that he asked § 87(2)(b) if he owned everything in the trunk and § 87(2)(b) admitted to being the owner of the marijuana. Lt. Cortright did not know if he searched § 87(2)(b) § 87(2)(g)

Allegation (D): Lt. Patrick Cortright searched § 87(2)(b) s vehicle.

§ 87(2)(b) alleged that Lt. Cortright searched his car and the trunk of his car, where he recovered the marijuana from. Lt. Cortright, who believed § 87(2)(b) was stealing the car, had decided to bring the car back to the stationhouse so he searched the trunk of the car to ensure that there was no “body or flammable liquids” that could harm him while he drove back to the stationhouse. According to NYPD Patrol Guide procedure 218-13, Inventory Searched of Automobiles and Other Property (Encl. 1B), an officer can search the glove compartment, console, trunk, etc., to protect property, ensure against unwarranted claims of theft, and protect uniformed members of service and others against dangerous instrumentalities.” § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: